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DOCKET FILE COPY ORIGINAL

April 25, 2001

RECEIVED

94-1291

APR 26 2001

FCC MAIL ROOM

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, D.C. 20554

Re: Petition for Expedited Waiver of CFR Sections 64.1100 – 64.1190: Policies and Procedures Concerning Unauthorized Changes of End User's Long Distance Carriers

Dear Secretary Salas:

Choice One Communications of New York, Inc. ("Choice One") respectfully submits an original and five copies of an Emergency Petition for Expedited Waiver. Choice One seeks an expedited limited waiver of 47 CFR Sections 64.1100 – 64.1190, and Section 258 of the Telecommunications Act of 1996 to permit the transfer of certain presubscribed customers of CTSI, Inc. ("CTSI") to Choice One without first obtaining subscriber authorization and verification.

An extra copy of this Petition has been enclosed for return. Kindly file-stamp this copy and return it in the enclosed, postage-paid envelope.

If you have any questions regarding this filing, please do not hesitate to contact the undersigned at (518) 689-3401.

Very truly yours,

CHOICE ONE COMMUNICATIONS OF
NEW YORK INC.

By: Christopher J. Hanifin, *Its Attorney*
2 Pine West Plaza, Suite 205
Washington Avenue Extension
Albany, New York 12205
(518) 689-3401; (518) 869-9738 (fax)
chanifin@choiceonecom.com

Enclosure

No. of Copies rec'd 045
List A B C D E

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of

APR 26 2001

Implementation of the Subscriber Carrier
Selection Changes Provisions of the
Telecommunications Act of 1996

FCC MAIL ROOM

CC Docket No. 94-129

Choice One Communications
of New York Inc. Emergency Petition
for Expedited Waiver

**EMERGENCY PETITION FOR
EXPEDITED WAIVER OF COMMISSION'S RULES**

Choice One Communications of New York Inc. ("Choice One") respectfully requests a limited waiver of the authorization and verification requirements of the Commission's rules, 47 CFR Sections 64.1100 through 64.1190, Section 258 of the Telecommunications Act of 1996, and other relevant Orders to the extent necessary to permit Choice One and CTSI, Inc. ("CTSI") to transfer certain end users of CTSI to Choice One's telecommunications services without first obtaining each subscriber's authorization and verification.¹ As this Emergency Petition For Expedited Waiver of Commission's Rules ("Petition") will demonstrate, Choice One fully satisfies the special circumstances required for a waiver of the Commission's rules as stated in Wait Radio v.

¹ 47 CFR Sections 64.1100 through 64.1190 prohibit a telecommunications carrier from submitting a preferred carrier change order unless the carrier has obtained (1) the subscriber's written letter of agency; (2) the subscriber's electronic verification via a toll-free telephone number used exclusively to verify subscriber carrier changes; or (3) the subscriber's oral authorization to submit the preferred carrier change order from an appropriately qualified independent third party that confirms and includes appropriate verification data (e.g., the subscriber's date of birth or social security number).

FCC.² Accordingly, an expeditious grant of the instant Petition will serve the public interest. Choice One requests expedited treatment of this waiver so that Choice One may close its transactions with CTSI by May 14, 2001.

I. Background

Choice One, which provides facilities-based intrastate, interstate, and international services, is a publicly held Delaware corporation that operates as a facilities-based, competitive local exchange carrier (“CLEC”) in New York.³ CTSI is a Pennsylvania corporation that provides service in Pennsylvania and New York, among other states.⁴ This Petition arises out of a transaction between Choice One and CTSI. CTSI has decided to withdraw from the New York market. Choice One has agreed to provide local and long distance telephone services to the New York and Ohio business end users of CTSI, and acquire limited collocation assets from CTSI pursuant to certain terms. Under this arrangement, the transferred customers will continue to receive uninterrupted local and long distance telephone service and quality customer service from a facilities-based competitor. Moreover, the transfer of these customers to Choice One will allow Choice One to offer them the same or better service quality and the better services, at the same or comparable rates.⁵

² WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969); Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164 (D.C. Cir. 1990).

³ Case 98-C-1444, Joint Petition of Choice One Communications Inc. and Choice One Communications of New York Inc. for Approval of the Transfer of Choice One Communications’ Certificate of Public Convenience and Necessity to Choice One Communications of New York (issued November 20, 1998).

⁴ Cases 96-C-0911 (issued on May 7, 1997) and 97-C-1626 (issued December 2, 1997); Case 98-139-TP-ACE (issued February 3, 2000).

⁵ Choice One will use every effort to ensure that end users’ rates are at or lower than CTSI’s rates. CTSI offers a flat rate service and Choice One offers a per-minute service. In the limited instance that a particular CTSI end user has higher-than-anticipated use patterns and has some services (like vertical features) that are not technically permissible under Choice One’s offerings, the end user may experience some rate fluctuations due to these anomalies. As will be stated herein, CTSI and Choice One will offer all end users generous financial credits and Choice One will absorb costs so that end users will have the exact

In accordance with the Commission's prior Orders in this docket, Choice One proposes to send the attached notice letters to the affected CTSI customers. The first letter will be sent jointly by CTSI and Choice One. The joint letter, attached as Exhibit A, is intended to notify the affected end users of the transfer prior to customer migration (the "Notice Letter"). This Notice Letter will be sent to the affected end users stating that: (1) their local, intraLATA, and interLATA service will be switched to Choice One; (2) such end users will not be assessed installation or setup charges in connection with the transfer to Choice One; (3) Choice One will offer rates comparable to the rates offered to them by CTSI;⁶ (4) customers are free to select another telecommunications carrier if they do not wish to receive Choice One service, and (5) end users will receive generous bill credits or direct payments.⁷ The Notice Letter and the Post-Migration Notice Letter will provide the affected end users with a toll-free number to call with any questions concerning the transaction.

After the end users have been transferred to Choice One's network, Choice One will send the letter attached as Exhibit B (the "Post-Migration Letter"). The Post-Migration letter will notify the end users that the transfer has been completed, reiterate the information contained in the Notice Letter, and remind the end users that they may

same contract terms for up to (90) days to help ensure that Choice One's rates are initially less than or equal to current rates.

⁶ As part of this transaction, CTSI and Choice One have arranged to offer CTSI end users a sizable per line credit to offset certain charges. An end user will receive a financial credit of \$ 125.05 for the first line and \$ 50.05 for each additional line on the account. Choice One's usage-based rates will also be less expensive for lower-than-average and average-use callers. Accordingly, customers with this usage pattern will reap significant savings, while higher-than-average users will receive such financial credits and other offerings in this petition (e.g., satisfaction guarantee, *infra*) to ensure that rates are initially equal to or better than their current rates. Choice One will also offer another free product, called Freeway SM, which allows end users to call another Choice One client in the same LATA toll-free (where a toll charge was previously assessed). These offerings will help ensure that the end user will receive complete rate protection, especially during and near the conversion timeframe.

⁷ End users will receive a bill credit or direct payment of \$ 125.05 for the first line and \$ 50.05 for each additional line and refund an end user's initial deposit, if any.

choose another telecommunications carrier (*at Choice One's expense*) if Choice One is not able to fix or resolve a quality of service issue within a certain timeframe.⁸

Choice One will also cooperate with CTSI to ensure that the transition of the effected end users to Choice One is seamless,⁹ and to resolve any outstanding customer complaints regarding domestic or international service filed by the affected end users.

2. Discussion

The FCC has authority to waive a rule if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.¹⁰ Choice One submits that waiver of the Commission's authorization and verification rules is appropriate in this case. A deviation from the rules is necessary to enable Choice One to ensure a seamless transaction of the affected customers to Choice One without inconveniencing the customers or interrupting their service. If Choice One were required to obtain verification from each customer, there is a risk that the telecommunications services of certain customers could be interrupted, or that customers could be charged higher casual calling rates if a carrier selection is not made since CTSI will cease to provide telecommunications services.

Moreover, the letters Choice One proposes to send to affected customers will ensure that customers are informed of the process and that their rights are adequately protected. All of the affected customers will (1) receive prior notification of the change in carriers (Exhibit A), (2) be informed of their ability to select the telecommunications

⁸ By Choice One paying future end user conversion fees in the event an end user is not satisfied, Choice One is offering an additional consumer protection to guard against rate or service changes associated with any migration.

⁹ The migration of end users from CTSI to Choice One involves hot cuts and ILEC (or other CLEC) coordination.

¹⁰ WAIT Radio, at 1159; Northeast Cellular Telephone Co. at 1166.

carrier of their choice; be advised of generous bill credits and direct payments; (3) be notified that any installation charges will be waived; and (4) be given a toll-free number to contact Choice One with any questions regarding the transaction. After customers are switched to Choice One, they will receive another letter giving them the same information again (Exhibit B). By granting the transfer of these customers via the process described in this Petition, the Commission will ensure that the policy goals of the FCC's carrier change rules are served in an efficient fashion that will permit Choice One to seamlessly transfer the affected customers without any disruption of service. The circumstances involved in the instant Petition are similar to those in which the Commission has previously found sufficient to justify a waiver of the carrier change rules.

If, on the other hand, Choice One must acquire a new authorization from each customer, some customers who do not respond to Choice One's request for authorization may end up having a loss of service or end up paying higher rates for casual calling because CTSI will cease provision of service to the end users involved in this transaction.

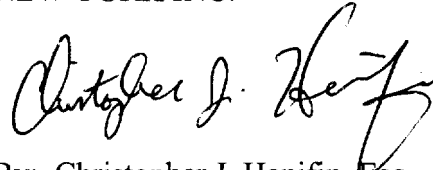
3. Conclusion

WHEREFORE, Choice One respectfully requests the Commission grant a limited waiver of the authorization and verification requirements of the Commission's rules, 47 CFR Sections 64.1100 through 64.1190, Section 258 of the Telecommunications Act of 1996, and other relevant Orders to the extent necessary to permit Choice One and CTSI to transfer certain end users of CTSI to Choice One's client base without first obtaining each subscriber's authorization and verification. Choice One further requests that this

Petition be expedited so that Choice One and CTSI may close their transaction by May 14, 2001.

Respectfully submitted,

CHOICE ONE COMMUNICATIONS OF
NEW YORK INC.

A handwritten signature in black ink, appearing to read "Christopher J. Hanifin". The signature is fluid and cursive, with a large, stylized "H" and "f".

By: Christopher J. Hanifin, Esq.

Its Attorney

2 Pine West Plaza, Suite 205
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Albany, New York 12205
(518) 689-3401
(518) 869-9738 (fax)
chanifin@choiceonecom.com

CERTIFICATE OF SERVICE

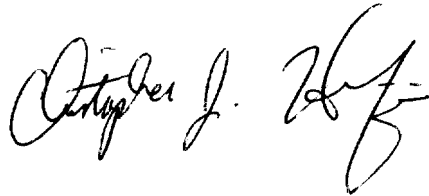
I, Christopher Hanifin, do certify that copies of the foregoing Petition were served on the persons listed below by regular, first class U.S. Mail, postage pre-paid on this 25th day of April, 2001.


Magalie Roman Salas
Secretary, Room TW-A325
Federal Communications Commission
The Portals, 445 Twelfth Street, S.W.
Washington, DC 20554

K. Michele Walters
Associate Division Chief
Accounting Policy Division
Common Carrier Bureau
Federal Communications Commission
The Portals, 445 Twelfth Street, S.W.
Washington, DC 20554

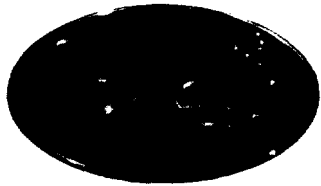
Dana Walton-Bradford, Attorney
Accounting Policy Division
Common Carrier Bureau
Federal Communications Commission
The Portals, 445 Twelfth Street, S.W.
Washington, DC 20554

International Transcription Services
1231 20th Street, NW
Washington, DC 20036



Sworn to by me:


ANN M. RIVERS
NOTARY PUBLIC - STATE OF NEW YORK
NO. 01-R16052033
QUALIFIED IN ALBANY COUNTY
COMMISSION EXPIRES 12-11-2002



A COMMONWEALTH TELEPHONE
ENTERPRISES COMPANY

ChoiceOne.
Communications

EXHIBIT A – PRE-TRANSFER NOTICE LETTER

April 30, 2001

**IMPORTANT INFORMATION REGARDING
YOUR TELEPHONE SERVICE
**** READ IMMEDIATELY ******

Dear CTSI Customer:

Last year, CTSI announced that we would exit the Syracuse and Binghamton, New York areas and that we would notify you of changes regarding your local, long distance, and Internet services.

Effective May 30, 2001, CTSI will no longer provide telephone and Internet services to these areas. To make things easier for you, CTSI and Choice One Communications ("Choice One") are working together to ensure a smooth and easy transfer of your service to Choice One. Choice One is a leading integrated communications services provider offering local exchange and long distance telecommunications services, data services including Internet and DSL solutions, and web hosting and design. Choice One offers excellent service and competitive rates.

Your account will be automatically transferred to Choice One unless you choose to transfer to another telephone provider before May 25, 2001. The transfer to Choice One is free of the usual transfer charges. After CTSI verifies your selection of Choice One, you will receive a credit on your bill, of \$125.05 for the first line, \$50.05 for each additional line and refund your initial deposit, if any

Choice One offers the same range of services that CTSI provided including local, long distance and Internet services as well as rates that are comparable to CTSI. Choice One's client service specialists are ready to assist you with the transition of your service, and to answer any questions you may have. You may call Choice One's client specialists at **1-866-333-8351**, or visit the Choice One web site at www.choiceonecom.com/CTSI.

We are confident that the arrangement between CTSI and Choice One will provide you the best alternative for continued telephone service. However, if you select a different provider in your area as an alternative to Choice One, you must make arrangements to start your service prior to May 25, 2001 (please also call CTSI customer service at **1-800-453-0888** so that the appropriate credits may be applied).

In closing, CTSI extends our appreciation and sincere thanks for giving us the opportunity to serve you and Choice One Communications looks forward to continuing this quality relationship and outstanding service to ensure continued delivery of your telecommunications needs. Please do not hesitate to contact us if we may be of assistance.

Sincerely,

Commonwealth Telephone Enterprises

Choice One Communications Inc.



**EXHIBIT B – POST
MIGRATION NOTICE LETTER**

June 30, 2001

IMPORTANT NOTICE

As announced previously in our letter to you of April 30, 2001, Choice One Communications of New York Inc. ("Choice One") and CTSI Inc. ("CTSI") have transferred your service from CTSI to Choice One.

Your new Choice One local and long distance services are comparable to your previous services with CTSI, and the transfer was free. Your new Choice One invoice should arrive in the next few weeks. Please expect a call from our client service specialists as well.

We value our new relationship and pledge our commitment to providing you with quality services and personalized customer care. If you experience a Choice One related service problem and we are not able to fix the problem within thirty days, you are free to choose another telecommunications carrier – and Choice One will pay to switch you to your new carrier (certain limitations apply).

Please contact us at 1-866-333-8351, or visit our website at www.choiceonecom.com/CTSI if you have any questions, and thank you for choosing Choice One.

Sincerely,

Choice One Communications of New York Inc.